

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE HENNEPIN COUNTY HUMAN RESOURCES BOARD

Izela Gayle,

Employee,

v.

Hennepin County Medical Center,

Employer.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER**

The above-entitled matter came on for hearing before Administrative Law Judge George A. Beck on March 12-15, 2001 at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700 in the City of Minneapolis, Minnesota. The record closed upon receipt of the final written brief filed on May 2, 2001.

Martin D. Munic, Assistant County Attorney, 2000A Government Center, Minneapolis, MN 55487, appeared on behalf of the employer, Hennepin County Medical Center (HCMC). R. Donald Hawkinson, Attorney at Law, 1455 West Lake Street, Suite 208, Minneapolis, MN 55408, appeared on behalf of the employee, Izela Gayle.

NOTICE

Under Minn. Stat. § 383B.38, subd. 1a(e) this Order is the final decision in this case. This Order may be appealed by the employee , or by the employer upon approval of the Hennepin County Board, as provided by Minn. Stat. § § 14.63-68 and 383B.38, subd. 1a(e).

STATEMENT OF ISSUE

Whether Hennepin County Medical Center had just cause to discharge Izela Gayle from her permanent classified position as a public service assistant with the Health Information Management Department of the Hennepin County Medical Center.

Based upon all of the files, records and proceedings, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Izela Gayle, age 39, was born in Panama. Spanish was her first language. She came to the United States at age 8 and is a 1980 graduate of the Blake School. She was employed as a nursing assistant for 12 years at a nursing home beginning in 1981. She first became employed at HCMC as a part-time telephone operator in 1993.

2. Ms. Gayle began working as a clerk in the chart room of HCMC's Health Information Management Department (HIM) on April 16, 1995. HIM is the medical records department for the medical center. The chart room is one unit of the department and its employees are responsible for pulling and filing records for all in-patient visits to the medical center. The chart room is open 24 hours a day, 7 days a week and has three employee shifts beginning at 7:00 a.m., 3:00 p.m. and 11:00 p.m. There is a supervisor for each shift and each shift has team leaders who are not management, but operate as an extension of the supervisor. The team leaders (or lead workers) are Office Specialists 3. The line workers in the chart room are called clerks or public service assistants.

3. Prior to completing her probation at HIM, Ms. Gayle took a promotional opportunity in HCMC's telecommunications department in July of 1995. Ms. Gayle told her HIM supervisor that she was resigning rather than transferring to another position with HCMC.

4. Ms. Gayle failed to pass probation in the telecommunications department. She was rated needs improvement in five of eleven performance factors and was rated unsatisfactory in interpersonal skills. She was then returned to a clerk position in the chart room to begin working January 8, 1996. She therefore passed her probation with HIM by default. She worked a day shift beginning at 7:00 a.m.^[1] Her job as a clerk was to pull and retrieve charts requested by other departments in the medical center. Ms. Gayle was generally accurate and proficient in pulling charts.

5. In 1996 all employees in the chart room changed to four 10 hour days for a period of about one year. When the other employees changed back to eight hour days, Ms. Gayle remained working four 10 hour days at her request.

6. On December 12, 1996, Ms. Gayle was given an oral warning by her supervisor, Janice Weeks. She was directed not to take patient records out of the chart room area and place them in Ms. Week's mailbox.^[2]

7. On March 18, 1997, Ms. Weeks issued Ms. Gayle a written reprimand for overutilization of sick leave.^[3]

8. Ms. Gayle received a performance appraisal for the first six months of 1997 from her new supervisor, Elaine Mason, on July 24, 1997. Her overall performance appraisal was fully capable. She was rated fully capable in all performance standards except for two, namely, "demonstrates respect and appreciation

for each co-worker and customer,” where she was rated “needs improvement,” and “maintains discretion and confidentiality in all communications with others,” where she was also rated “needs improvement.”^[4]

9. Ms. Mason issued Ms. Gayle a verbal reprimand on November 10, 1997 for poor work performance. Ms. Gayle was advised that she had made inappropriate responses to clinic customers and that the behavior was unprofessional, demonstrated poor teamwork and caused other staff to become resentful. In a written note responding to the reprimand Ms. Gayle indicated that it would not happen again but observed that, “another tree dies for this memo.”^[5]

10. Ms. Gayle received a verbal reprimand concerning attendance from Ms. Mason on May 14, 1998. She was advised that she was not in compliance with the department’s sick leave and tardiness guidelines.^[6]

11. Ms. Gayle received a verbal reprimand for interpersonal misconduct from Ms. Mason on October 1, 1998. She was reprimanded for referring to management in a negative manner and advised that she was to make immediate improvement in her interpersonal skills with staff at HCMC or more serious disciplinary action might occur.^[7]

12. A performance appraisal for the period August 30, 1998 to October 24, 1998 was provided to Ms. Gayle on October 21, 1998. Ms. Mason rated Ms. Gayle fully capable as an overall performance appraisal. The only area in which she was rated “needs improvement” was in demonstrating respect and appreciation for each co-worker and customer. A comment indicated that Izela had improved in this area but needed to continue to be aware of the impact her words and actions have on her co-workers. It was noted that Ms. Gayle was promoted to Public Service Assistant on October 30, 1998 and that she continued to provide excellent customer service by responding in a timely manner to all requests.^[8]

13. A written reprimand concerning attendance and tardiness was issued to Ms. Gayle by Ms. Mason on December 23, 1998. It stated that since May of 1998 she had been absent six times and tardy 14 times. She was encouraged to contact the Employee Assistance Program for help with improving her attendance.^[9]

14. On March 17, 1999 Ms. Gayle was given a performance appraisal for the prior six month period. Her overall performance appraisal was “fully capable” according to her supervisor Ms. Mason. It was noted that she produced high quality work. Her only “needs improvement” rating was for demonstrating respect and appreciation for each co-worker and customer. She successfully completed her probationary period for her new position with this appraisal.^[10]

15. On December 7, 1999 Ms. Gayle got into a loud argument with another employee in the chart room. In the course of the argument Ms. Gayle called the other employee “Hitler” a couple of times. The other employee was upset.^[11] Ms. Gayle’s new supervisor, Gary Anderson, issued her a verbal reprimand for the December 7 incident on December 13, 1999. She was advised that “loud disruptive behavior and

name calling is not acceptable and will not be tolerated.” She was advised to treat all individuals with courtesy, dignity and respect and warned that further inappropriate conduct might result in additional disciplinary action.^[12]

16. Ms. Gayle was responsible for recording daily statistics regarding access to charts. She annotated these statistics with extensive notes about her observations of things occurring in the work place.^[13] Supervisor Anderson told her to stop writing the narratives. Ms. Gayle then checked with her prior supervisor (Ms. Mason) who no longer worked for the County, who saw nothing wrong with adding the narratives. Ms. Gayle followed Ms. Mason’s advice.

17. Supervisor Anderson issued Ms. Gayle a written reprimand on March 2, 2000 for an incident which occurred on February 18, 2000. On that date Ms. Gayle, in the course of an argument with a co-worker, referred to that co-worker as a “bitch”. She was again advised to treat all employees with courtesy, dignity and respect and warned that further inappropriate conduct would result in additional more serious disciplinary action, “up to and including termination.” On two occasions she sent her supervisor definitions of words from an encyclopedia that included profanities.^[14] Ms. Gayle argued that the word bitch was not derogatory. She was provided with a copy of the medical center policy on interpersonal conduct.^[15]

18. The interpersonal conduct policy provides that all individuals are to be treated with respect and specifically prohibits “nonconstructive criticism, including public comments, which undermine confidence, belittle, or suggest incompetence.”^[16]

19. Ms. Gayle received a six month performance appraisal on March 23, 2000. Supervisor Anderson rated her overall performance as fully capable. All of the performance standards were rated fully capable except for “completion of work as specified” which was rated “highly commendable,” “identifies problems and suggests alternative solutions,” which was rated “highly commendable” and “demonstrates respect and appreciation for each co-worker and customer” which was again rated “needs improvement.” Ms. Gayle was again advised that she needed to make immediate and consistent improvement with regards to her communications between co-workers and management. It was observed that she can be “very argumentative and antagonistic with co-workers and her supervisor.” She was advised that she would be “progressively disciplined for each occurrence in which HCMC and HIM policies are infringed.”^[17]

20. In late March of 2000 management proposed to change Ms. Gayle to eight hour days to accommodate the work flow in the chart room. The change was to be effective April 9, 2000. Management believed that extra staffing was not needed from 5:00 a.m. to 7:00 a.m. sent to Supervisor Anderson, and that 8 hour days might reduce work fatigue for Ms. Gayle. She requested that she be allowed to remain on 10 hour days as an accommodation. Ms. Gayle wanted to have weekends off and Wednesdays free for an appointment with her psychologist.

21. In a letter dated April 10, 2000 psychologist John Nelson stated that Ms. Gayle carries a diagnosis of bipolar affective disorder and supported her request for a four day work week. In response to supervisor Anderson's request to him to document Ms. Gayle's disability, Mr. Nelson explained that bipolar disorder consists of significant mood swings ranging from moderate to severe symptoms of depression to symptoms of mania. He stated that these mood swings can occur quickly and unpredictably, often negatively affecting relationships.^[18]

22. Ms. Gayle was first diagnosed as bipolar by Mr. Nelson in 1997. However, despite Mr. Nelson's urging, she continuously refused a referral for medication until late September of 2000.^[19] Her employer first became aware of her bipolar condition in the April 10, 2000 letter.

23. On May 16, 2000 she was advised she could work eight hour days Monday through Friday or eight hour days Sunday through Tuesday and Thursday and Friday. Neither option was acceptable to Ms. Gayle.^[20] Ms. Gayle was assigned to work in a cubicle on May 16, 2000 in an attempt to meet her work restrictions. However, she experienced claustrophobia and elevated blood pressure when she attempted to work in it.^[21] Ms. Gayle filed an accommodation request asking that she not be assigned to a cubicle.^[22] She apparently worked in the cubicle only one day.

24. On June 28, 2000 Supervisor Anderson told Ms. Gayle in a letter that her request to work 4 ten hour days was denied. Because she continued to refuse other alternatives, she was sent a change of hours form on July 9, 2000 that would allow her to request 4 eight hour days with Wednesdays off. Ms. Gayle continued to pursue the request for 10 hour days in memos written July 9 and 30 of 2000. In a letter dated August 10, 2000 the HIM director again confirmed the denial of the request.^[23]

25. Ms. Gayle was granted a medical leave of absence from May 21, 2000 to July 10, 2000. When Ms. Gayle returned to work on July 10, 2000 she was assigned to the control desk which handles all incoming requests for charts from other departments. She was assigned to the control desk because of restrictions due to wrist and knee pain that did not allow her to pull charts and due to her claustrophobic reaction to working in a cubicle. She worked the day shift starting at 7:00 a.m. and was allowed time off on Wednesdays for her medical appointment. She was provided with the HIM policy on telephone etiquette. The policy provides that employees should project a positive image of the department and cautions employees to not vent their frustrations on the telephone.^[24]

26. On August 4, 2000, Supervisor Anderson issued a two day suspension to Ms. Gayle resulting from an incident on July 28, 2000. On that date Ms. Gayle called her team leader, in Spanish, a "man whore" and a "little shit". In English she told him that "all you know how to do is to make babies." A Spanish speaking employee happened to be present at the time of this incident and told the team leader what Ms. Gayle said in Spanish. Ms. Gayle often refused to take directions from this team leader, which led to arguments. The suspension memo advised Ms. Gayle that this continued pattern of inappropriate behavior, including the incidents on December 7, 1999 and

February 18, 2000, was not acceptable and would not be tolerated. She was advised that she must immediately refrain from this behavior, follow all HCMC and HIM policies and procedures or more serious disciplinary action up to and including termination would occur.^[25]

27. An appeal hearing regarding the two day suspension was held on August 24, 2000 before the director of HIM. Ms. Gayle indicated that she did not feel it was derogatory or inappropriate to call someone a womanizer, a dog or to say that they are only good for making babies. She asked for a list of what words she can't say in the workplace. She stated she would like to have a peer group decide disciplinary matters.^[26] The director of HIM upheld the two day suspension in a letter dated August 30, 2000. Ms. Gayle was strongly encouraged to follow through with the recommendations made in the suspension letter dated August 4, 2000.^[27]

28. Ms. Gayle was involved in another incident which occurred on August 31, 2000. On that date Ms. Gayle became involved in a loud verbal confrontation with a new team leader that disrupted the office. The incident included yelling, arm waving, and complaining by Ms. Gayle and continued for more than an hour. The confrontation could be overheard in nearby HIM offices. The incident caused the team leader to become ill and leave the workplace.^[28] Ms. Gayle often refused to follow directions from this new team leader.

29. The August 31st incident was precipitated because the team leader had answered a phone call and responded to a "stat" request in Ms. Gayle's absence without going through Ms. Gayle. Ms. Gayle advised the team leader that it was not her job to answer phones and that the team leader thought she was better but she (Ms. Gayle) had worked here longer. Ms. Gayle told the team leader that she didn't understand how management made the decisions to appoint team leaders.^[29] She had once commented, "Where's the team leader so I can ride him today?"^[30]

30. On September 5, 2000, Ms. Gayle told customers calling the chart room that they should "come and get your own records" and advised them to "complain to administration".

31. Ms. Gayle was issued a three day suspension for her conduct on August 31 and September 5, 2000 in a memo from Supervisor Anderson dated September 15, 2000. She was again advised that failure to comply with policies would result in additional disciplinary action, not excluding termination.^[31]

32. On September 19, 2000 the director of HIM issued a memo to all employees concerning a professional office environment. The memo advised employees, among other things, that HIM was committed to providing a safe and respectful work environment for everyone and reminded the recipients that gossip, rumor, profanity, derogatory remarks, name calling, questions about others personal lives, teasing, arguing, shouting and talk about sex are examples of unacceptable and inappropriate conversations in the workplace. The memo stated that "this message is

an important notice of the workplace expectations” and advised employees that disciplinary action may result from violations of this policy.^[32]

33. On September 29, 2000, Ms. Gayle gave Supervisor Anderson a memo stating that she intended to start telling clinics calling in to the chart room that her team leader had a bad conception of customer service.^[33] Anderson instructed her not to do so and told her she should only discuss items necessary to a client request.^[34]

34. The director of HIM conducted an appeal of the three day suspension issued to Ms. Gayle, based upon written information, and upheld the suspension in a letter dated October 11, 2000.^[35]

35. On October 6, 2000, Ms. Gayle was overheard telling clients calling the chart room that she was being suspended, that “management was hindering her ability to provide good customer service” and that “management should check on what they are going instead of what she is doing.” She told her team leader that the team leader should be suspended. When the team leader suggested that she apply to another department if she was unsatisfied with her job she responded that “I am not going anywhere. I am going to stay here and bug and irritate management and the supervisors. I am not going to let them get rid of me. They can’t get rid of me.”^[36]

36. Supervisor Anderson met with Ms. Gayle on October 16, 2000 and specifically told her that she was not to make comments on the telephone about co-workers, team leaders, supervisors or management. Ms. Gayle responded that Mr. Anderson could not tell her not to make comments about people. She stated that she will still make comments about people and that she didn't know what “derogatory” or “professional manner” meant.^[37] In a memo dated October 18, 2000 Ms. Gayle responded to Mr. Anderson’s memo to her. She noted that she planned to tape all meetings between management and herself in the future or refuse to have them. She described Mr. Anderson’s memo as discriminatory and censorship.^[38]

37. Throughout the year 2000, Ms. Gayle wrote lengthy rambling memos to management defending her actions or documenting incidents that occurred.^[39]

38. On November 3, 2000 Ms. Gayle was placed on a paid suspension pending her dismissal becoming effective. The notice described the October 6, incident and a follow-up to that, as well as the prior disciplinary action. The notice advised Ms. Gayle of her appeal rights.^[40]

39. On November 15, 2000, Ms. Gayle had an appeal hearing before the director of the medical center. He subsequently issued a letter upholding the dismissal effective November 17, 2000.^[41]

40. In a letter dated February 13, 2001 Psychologist Dr. Ransom Pinck noted that when he first saw Ms. Gayle in September 6, 2000, her speech was accelerated and she had flight of ideas. He believes that her alleged loud, disruptive behavior and insubordination was related to her bipolar disorder. He states that she reluctantly

agreed to medication but that it has resulted in the ability to stay on track in her thinking and to express her feelings without getting overly emotional.^[42]

41. In a letter dated February 19, 2001 Dr. Bruce Meyer stated that he had been seeing Ms. Gayle since September 27, 2000 for bipolar affective disorder and that she had responded very well to medication (Depakote) with no evidence of pressured speech, labile mood, inappropriate irritability or disordered thinking. He stated that he knew of no reason why Ms. Gayle could not return to work.^[43]

42. The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV) cautions that a clinical diagnosis does not “carry any necessary implication regarding the individual’s degree of control over the behaviors that may be associated with that disorder. Even when diminished control over one’s behavior is a feature of the disorder, having the diagnosis in itself does not demonstrate that a particular individual is (or was) unable to control his or her behavior at a particular time.”^[44]

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge has jurisdiction in this matter under Minn. Stat. § 383B.38.

2. All relevant substantive and procedural requirements of statute and rule have been complied with by Hennepin County.

3. Minn. Stat. § 383B.38, subd. 1 provides that: No permanent employee in classified service shall be suspended, demoted, or discharged except for just cause.”

4. Hennepin County personnel rule 17.3 provides in part as follows:

An employee who has permanent status or is a veteran shall be dismissed or involuntarily demoted only for just cause based on incompetency/failure to meet job performance requirements, misconduct and/or gross misconduct.

5. Under OAH rules, Hennepin County Medical Center must prove by a preponderance of the evidence that there is just cause for taking disciplinary action against the employee.^[45]

6. Hennepin County Personnel Rule 16.3 sets out the general rules of conduct for employees and provides in part as follows:

g. No employee shall conduct himself/herself in any manner which shall reflect negatively on the county.

Such conduct shall be considered to be misconduct (or gross misconduct) and shall be subject to disciplinary action unless the employee can prove to the appointing authority the existence of significant mitigating circumstances sufficient to modify or eliminate the disciplinary action.

Such conduct shall include, but be limited to, the following behaviors: ...engaging in discrimination and/or harassment; ...insubordination; the verbal or written or physical abuse of an individual seeking service or assistance from the County; ...

7. That the employee is engaged in harassment, insubordination and verbal abuse which constitutes misconduct under Rule 16.3g.

8. That the employer has demonstrated just cause for disciplinary action within the meaning of Hennepin County Rule 17.3 and Minn. Stat. § 383B.38, subd. 1.

9. Minn. Stat. § 383B.38, subd. 1a.(e) provides in part as follows:

If the Administrative Law Judge finds, based upon the record that the action appealed was not taken by the department head for just cause, the employee shall be reinstated to the position, or an equal position within the same department, without loss of pay. If the Administrative Law Judge finds that just cause exists for the disciplinary action, it shall affirm or uphold the action of the department head, or, if the employee has asserted and the hearing record establishes extenuating circumstances, the Administrative Law Judge may reinstate the employee, with full, partial or no pay, or may modify the department head's action by substituting a lesser disciplinary action. The Administrative Law Judge's Order is the final decision.

10. That the employee has not established extenuating circumstances justifying a lesser disciplinary action in this case.

11. That the reasons supporting this decision are set out in the Memorandum that follows and that is incorporated into these Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

ORDER

IT IS ORDERED that the decision by Hennepin County Medical Center to discharge Izela Gayle is hereby affirmed and the employee's appeal is hereby denied.

Dated this 18th day of May, 2001.

S/ George A. Beck

GEORGE A. BECK
Administrative Law Judge

Reported: Taped. 13 Tapes. No Transcript Prepared.

MEMORANDUM

Under Minn. Stat. § 383B.38 the Hennepin County Medical Center must prove just cause for the discharge of any permanent employee in the classified service. The Minnesota Supreme Court has construed the term “just cause” in several cases. Those cases that have often cited the following definition:

“Cause” or “sufficient cause” means “legal cause” and not any cause which the council may think sufficient. The cause must be one that specifically relates to and affects the administration of the office, and must be restricted to something of a substantial nature directly affecting the rights and interests of the public. The cause must be one touching the qualifications of the officer or his performance of his duties, showing that he is not a fit person to hold the office.^[46]

In a later case the Supreme Court again affirmed this definition and added that “under this definition it appears that the cause or reason for dismissal must relate to the manner in which the employee performs his duties, and the evidence showing the existence and reasons for dismissal must be substantial.”^[47] The Minnesota Supreme Court has continued to apply the *Hagen* rule.^[48]

The Hennepin County Medical Center discharged Izela Gayle from her employment as a public service assistant in the chart room. It argues that the record demonstrates a persistent pattern of violations of work rules, insubordination, verbal harassment, and inappropriate interpersonal interactions with co-workers, supervisors and customers. The medical center asserts that it used progressive discipline in an attempt to correct the employee’s behavior, but was unsuccessful. Most of the facts alleged by the employer are admitted by the employee. The employee disputes whether or not these facts constitute just cause for dismissal and asserts that she has proved mitigating circumstances that justify modification of the discipline.

The record contains a number of examples of insubordination by the employee. She failed to follow Supervisor Anderson’s instructions to not write narratives on the daily statistics. She failed to follow his directions to cease derogatory comments about

management on the telephones. She was unable to accept directions from the team leaders. There are also repeated instances in the record of her verbal attacks on co-workers, team leaders and supervisors. She called co-workers "Hitler" and "bitch" and directed vulgarities at a supervisor. Her treatment of co-workers and supervisors constitutes harassment. The record indicates that she made a conscious attempt to irritate and harass managers. She consistently failed to acknowledge any wrongdoing and wrote numerous memos to her supervisors justifying her actions.

The medical center has demonstrated a patient attempt to correct the employee's behavior through the use of progressive discipline over a three year period, prior to dismissal. Ms. Gayle was advised as early as July of 1997 that she needed to improve her respect for other co-workers and customers. From 1997 through 2000 Ms. Gayle continued to engage in workplace incidents involving insults, name calling and refusal to accept direction. Despite receiving coaching from supervisors and being provided with guidelines for interpersonal conduct and telephone etiquette and despite discipline progressing from written reprimands to suspensions, Ms. Gayle showed no improvement in her behavior.

In April of 2000 Ms. Gayle disclosed to her employer that she had a diagnosis of bipolar affective disorder. The employee suggests that the medical center failed in its duty to refer her to Employee Assistance when it learned of her condition. However, Ms. Gayle was under the care of a psychologist since 1997, so it is unclear what might have resulted from a visit to the Employee Assistance Program. Additionally, the employer had referred Ms. Gayle to Employee Assistance earlier in connection with her missing a number of work days.

The employee asserts that her bipolar affective condition is an extenuating circumstance which justifies her reinstatement as an employee of HCMC. The statute provides that if the hearing record establishes extenuating circumstances the Administrative Law Judge may reinstate the employee with full, partial or no pay or may modify the department head's action by substituting a lesser disciplinary action. The employee argues that her hearing demeanor, along with the February 2001 assessments by her psychologist and psychiatrist, indicate that the medication she began taking on September 27, 2000 has significantly changed her behavior. She argues that the conduct cited by the employer was the result of her condition, which produced racing thoughts, inflated self-esteem and grandiosity. She points out that the quality and quantity of her work was found to be good by her supervisors.

The employer argues that Ms. Gayle's bipolar condition cannot be an extenuating circumstance because Ms. Gayle refused to take medication for her condition until she was on the verge of dismissal. The record indicates that she was urged on several occasions by her psychologist to take medication, but refused to do so. She was of course facing a good deal of difficulty in the workplace while these suggestions were being made to her. As the employer points out there are limits to what an employer can do to encourage an employee to seek treatment. Ms. Gayle was encouraged by Supervisor Anderson in his August 4, 2000 memo to utilize Employee Assistance. Additionally, the notes of the employee's therapist reflect that the employer was

supportive of her doing a trail of medication if recommended by her psychiatrist.^[49] The record indicates that HCMC did what it reasonably could to assist Ms. Gayle.

At the hearing Ms. Gayle acknowledged that most of her behavior was inappropriate. She believes that she would not act in that manner while on medication. She also acknowledged that she is the one in charge of whether or not she is in control. Her choice not to attempt medication was her own decision, the consequences of which should not be shifted to the employer. Extenuating circumstances implies a valid partial excuse for the misconduct, that lessens its seriousness.^[50] But this case does not present a situation where a sudden medical event precipitated the misconduct and the employer did not allow time for the employee to obtain help. Rather, this case involves a lengthy course of conduct, with repeated warnings to the employee, along with her choice not to seek appropriate, recommended treatment. In this situation it cannot be reasonably concluded that there is a valid excuse for the misconduct so that extenuating circumstances can be found to exist.

It should also be noted, that it is not clear that all of Ms. Gayle's behavior was directly related to a failure to take medication for her bipolar condition. She acknowledged to management that her choice of words that she used in the workplace was deliberate and it seems clear that she took pleasure in challenging management. The materials submitted by the employer from DSM IV counsels that a diagnosis of a mental disorder may be irrelevant to legal judgments that take into account such issues as individual responsibility.

The misconduct was clearly of a substantial and disruptive nature, related to Ms. Gayle's duties, and affected the public interest within the meaning of the case law. It is unfortunate that Ms. Gayle failed to seek appropriate help for her problem in a timely manner. Nonetheless, her misconduct in the workplace and the employer's reasonable response through progressive discipline constitute just cause in this record for her dismissal.

G.A.B.

^[1] Employer Ex. 4.

^[2] Employer Ex. 5.

^[3] Employer Ex. 6.

^[4] Employer Ex. 7.

^[5] Employer Ex. 8.

^[6] Employer Ex. 9.

^[7] Employer Ex. 10.

^[8] Employer Ex. 11.

^[9] Employer Ex. 12.

^[10] Employer Ex. 13.

^[11] Employer Ex. 14.

- [\[12\]](#) Employer Ex. 15.
- [\[13\]](#) Employee Ex. 9.
- [\[14\]](#) Ex. 16, p. 4.
- [\[15\]](#) Employer Ex. 17.
- [\[16\]](#) Employer Ex. 3.
- [\[17\]](#) Employer Ex. 16.
- [\[18\]](#) Employee Ex. 19.
- [\[19\]](#) Employee Ex. 14 (10/31/97).
- [\[20\]](#) Employee Ex. 5.
- [\[21\]](#) Employee Ex. 9, Employee Ex. 13, p. 21, 27.
- [\[22\]](#) Employee Ex. 13.
- [\[23\]](#) Employer Ex. 42.
- [\[24\]](#) Employer Ex. 2.
- [\[25\]](#) Employer Ex. 19.
- [\[26\]](#) Employer Ex. 21.
- [\[27\]](#) Employer Ex. 22.
- [\[28\]](#) Employer Ex. 25.
- [\[29\]](#) Employer Ex. 27.
- [\[30\]](#) Employer Ex. 27, p. 1.
- [\[31\]](#) Employer Ex. 25.
- [\[32\]](#) Employer Ex. 26.
- [\[33\]](#) Employer Ex. 37.
- [\[34\]](#) Employer Ex. 1.
- [\[35\]](#) Employer Ex. 28.
- [\[36\]](#) Employer Ex. 29.
- [\[37\]](#) Employer Ex. 32.
- [\[38\]](#) Employer Ex. 33.
- [\[39\]](#) Employee Ex. 6.
- [\[40\]](#) Employer Ex. 34.
- [\[41\]](#) Employer Ex. 35.
- [\[42\]](#) Employee Ex. 18.
- [\[43\]](#) Employee Ex. 17.
- [\[44\]](#) Employer Ex. 38.
- [\[45\]](#) Minn. Rule pt. 1400.7300, subp. 5.
- [\[46\]](#) State ex. rel *Hart v. Common Council*, 53 Minn. 238, 244; 55 N.W. 118, 120 (1893).
- [\[47\]](#) *Hagen v. Civil Service Board*, 164 N.W. 2d, 629, 632 (Minn. 1969).
- [\[48\]](#) *Leininger v. City of Bloomington*, 299 N.W. 2d, 723 (Minn. 1980).
- [\[49\]](#) Employee Ex. 14-6/14/2000.
- [\[50\]](#) American Heritage Dictionary (2d Coll. Ed. 1982).